IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.946 OF 2006

Yeshwantsinha Gajanan Harugade & Anr. ...Appellants

Versus

Savitribai Pandurang Harugade ...Respondent

Shri Umesh R. Mankapure for the Appellants.

Shri P.D.Pise for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 13, 2007.

P.C.:

1. The submissions of the learned Advocates appearing for the parties were heard on the last date. The Second Appeal is by the original Defendants. The Respondent is the original Plaintiff. The suit filed by the Respondent was decreed. The trial Court granted a declaration that the suit properties are redeemed from mortgage by the end of July 2000. The Appellants were directed to execute a release deed of redemption of mortgage of the suit properties in favour of the Respondent. The Appellants were directed to handover the possession of the suit properties to the Respondent. An appeal preferred by the Appellant before the District Court has been dismissed.

2. According to the case of the Respondent, she is

the owner of the suit properties. In the year 1990 the Respondent mortgaged the suit properties in favour of the Appellants for the consideration of Rs.50,000/-. The document of mortgage was executed on 03rd July, 1990 and it was agreed that the mortgage money was to be satisfied out of the income of the mortgage lands. The possession of the suit properties was handed over to the Appellants alongwith the standing sugar-cane crop. According to the case of the Respondent, the Appellants agreed to hand over possession of the suit properties after expiry of mortgage period of ten years. According to the Respondent-Plaintiff the nature of mortgage was a usufructuary mortgage. The suit was filed after giving notice dated 27th June, 2000.

3. The defence of the Appellants was that the suit property was not fertile and was of inferior quality. There case is that they had to spend Rs.70,000/- for bringing the suit property under cultivation. It is stated that the Respondent is liable for payment of the amount spent by the Appellants for improvement of the suit property.

4. The learned counsel for the Appellants submitted that though the Respondent was not entitled to exemption for payment of court fees, the suit was filed by the

Respondent without making payment of court fees and the trial Court erroneously entertained the suit and passed a decree. He submitted that there was a clear evidence on record to establish that an amount was spent by the Appellants on improvements of the suit property. The learned counsel for the Respondent submitted that no substantial question of law arises. He stated that as per the decree passed by the trial Court, the Respondent has paid the Court fees payable on the suit.

5. I have considered the submissions. The trial Court had framed an issued on the question whether the Respondent was entitled to exemption from payment of court fees. While deciding the suit, the said issue was answered against the Respondent and she was directed to pay requisite court fee within a period of eight days from the date of passing the decree. It is stated that the Respondent paid the court fee as directed by the trial Court.

6. There was a dispute between the parties as regards entitlement of the Respondent to exemption. The said issue was decided by the trial Court while deciding the suit and the Respondent was directed to pay court fees. No fault can be found with approach adopted by the trial Court in this behalf. The trial Court has

ensured that the Respondent pays the court fee payable on the suit claim. Therefore, there is no merit in the first submission advanced by the learned counsel for the Appellants.

7. The case of the Appellants was that it was orally agreed between them and the father-in-law of the Respondent that the expenditure incurred by the Appellants on improvements carried out on the suit property will be reimbursed by the Respondent. The only evidence in that behalf is of the constituted attorney of the Appellants. The Appellate Court has rightly observed that in case there was such agreement, the same would have been incorporated in the deed of mortgage as per the natural course of conduct of the parties.

8. The courts below have also considered the evidence adduced by the Appellants on the expenditure incurred by them. It was sought to be contended that on the basis of the document at Exhibit 78 that a sum of Rs.48,000/- was paid by the Appellants towards levelling charges of the suit lands. To prove the said document, a witness was examined by the Appellants. The Appellate Court has observed that the said witness was unable to state the survey number of the land which was levelled. He was also unable to state the place where the alleged

levelling work was carried out. Thus, the Appellate Court observed that the said witness was not sure that the levelling work was carried out on the suit property. Thus, the finding of fact recorded by the Courts is that the Appellants failed to establish the existence of oral agreement and that the Appellants also failed to establish that they had incurred expenditure on the improvement and development work on the suit property.

9. No substantial question of law arises in view of the findings of fact recorded by the Courts below on the basis of evidence on record. There is no merit in the Second Appeal and the same is accordingly dismissed with no orders as to costs.

JUDGE